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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal

FILE: [redacted] Office: Miami Date: JAN 18 2002

IN RE: Applicant: [redacted]

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

IN BEHALF OF APPLICANT:

[redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Helen E. Crawford for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, Florida, who certified his decision to the Associate Commissioner, Examinations, for review. The Associate Commissioner affirmed the decision of the director to deny the application. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be dismissed.

The applicant is a native and citizen of Cuba who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act of November 2, 1966.

The district director originally denied the application after determining that the applicant was inadmissible to the United States pursuant to section 212(a)(6)(D) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(6)(D), based on her arrival in the United States as a stowaway.

Upon review of the record of proceeding, the Associate Commissioner concurred with the director's conclusion that the applicant was a stowaway, and that there is no waiver available to an alien found inadmissible pursuant to section 212(a)(6)(D) of the Act. He, therefore, denied the application on January 8, 2001.

On June 15, 2001, counsel filed a motion to reopen, citing the new section 1505 of the LIFE Act Amendments to the NACARA 202 or HRIFA, which indicates that an alien who is now eligible for adjustment of status under this amendment may file a motion to reopen his or her case before the Service. Counsel states that the applicant is requesting the Service to reopen her case so that she may file an application under NACARA 202, and to allow her to adjust her status to that of a lawful permanent resident.

Pursuant to 8 C.F.R. 103.5(a)(1)(i), any motion to reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. 103.5(a)(4).

The record reflects that the applicant filed for adjustment of status under section 1 of the Cuban Adjustment Act. There is no evidence in the record that the applicant had applied for adjustment under the NACARA Act and that such application was denied. On January 8, 2001, the Associate Commissioner affirmed the district director's decision to deny the application under section 1 of the Cuban Adjustment Act. The petitioner had 30 days after January 8, 2001 in which to file a motion to reopen or a motion to reconsider. This motion, however, was received by the

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Service on June 15, 2001, approximately 5 months after the appeal was dismissed.

The motion, therefore, will be dismissed.

ORDER: The motion is dismissed.